



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 10, 1994

Mr. Hugh W. Davis
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR94-121

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 21949.

The City of Fort Worth (the "city") has received a request for information relating to a claim of sexual harassment involving city employees. Specifically, the requestor seeks "all records, including but not limited to, investigation reports, interview transcripts, and files relating to or pertaining to Mr. Collinsworth's demotion and reduction in pay and claims of inappropriate response to sexual harassment." You advise us that some of the requested information has been made available to the requestor. You seek to withhold the remaining information, which you have submitted to us for review, under sections 552.101, 552.103(a), 552.107, and 552.111 of the act.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You advise us that the complainant alleging sexual harassment has instituted a lawsuit in *Salerno v. City of Fort Worth*, Cause No. 236-150-742-93, in the 236th District Court, and has named the city, among others, as a defendant. In this instance you have made the requisite showing that the submitted information relates to pending litigation for purposes of section 552.103(a). The submitted records may therefore be withheld.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In reaching this conclusion, however, we assume that other parties to the litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the other parties have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because we resolve this matter under section 552.103(a), we need not address the applicability of the other asserted exceptions at this time.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 21949

cc: Ms. Ellen J. Pesserillo
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Bedford, Texas 76022
(w/o enclosures)